

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA, and )  
THE OSAGE MINERALS COUNCIL, )

Plaintiffs, )

vs. )

Case No. 14-CV-704-GKF-JFJ

OSAGE WIND, LLC; )  
ENEL KANSAS, LLC; and )  
ENEL GREEN POWER NORTH )  
AMERICA, INC., )

Defendants. )

**DEFENDANTS' MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND OPENING BRIEF IN SUPPORT**

**EXHIBIT 8**

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FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA, and  
THE OSAGE MINERALS COUNCIL,  
  
Plaintiffs,  
  
vs.  
  
OSAGE WIND, LLC;  
ENEL KANSAS, LLC; and  
ENEL GREEN POWER NORTH  
AMERICA, INC.,  
  
Defendants.

Case No. 14-CV-704-GKF-JFJ

## DECLARATION OF STEPHEN D. PIKE

I, Stephen D. Pike, hereby declare and state pursuant to 28 U.S.C. § 1746:

1. I submit this declaration in support of the motion for partial summary judgment filed by the defendants in the above-captioned action. The statements in this declaration are based upon my personal knowledge and my review of records kept in the ordinary course of business by my employer and its affiliated companies, and of documents produced in this case. I am an employee of Enel North America, Inc. (“ENA”), the corporate parent of defendant Enel Green Power North America, Inc. (“EGPNA”). I am Senior Vice President and Project Execution Leader for ENA, and am also a Senior Vice President of Enel Kansas, LLC, and of Osage Wind, LLC. I hold a Bachelor of Science in Civil Engineering from the University of New Hampshire. I have been employed by ENA or predecessor or affiliated companies for twenty-seven years. My current responsibilities include overseeing execution of wind projects for EGPNA’s engineering and construction team. I previously held the position Senior Vice President of Operations and Maintenance, and in that capacity was responsible for the operation and maintenance of the Osage Wind project after it was constructed (from 2015 to 2020). I have also held the positions of Project

Engineer, Project Manager and Operations Manager, and have been involved in all of EGPNA's wind projects from 2000 to present either in an engineering and construction, or operations and maintenance role.

2. Through my work on EGPNA wind projects, I am familiar with practices related to the creation of "as-built" or record drawings following the completion of construction. During construction, the contractor and sub-contractors make notations of any deviation from the construction plans. If there are any such deviations, at the end of construction, they are reflected in "as built" drawings which reflect the construction as it is actually built. If there are no deviations, final record drawings are produced which instead reflect no change from the plan drawings. Record drawings are used to provide an accurate representation of the finished project for future reference purposes and it is consequently important that they correctly reflect the construction of the project.

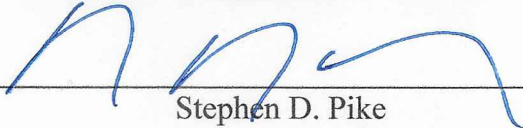
3. For Osage Wind project turbine foundation construction, contemporaneous communications among the contractor, sub-contractor and the engineering company responsible for producing record drawings reflect that they concluded there was no deviation from the construction plans. *See* Exhibit A hereto (documents bates-stamped SANDERFOOT0001432 and OSAGE WIND-038335 to -038336). The record drawings that were prepared consequently reflect that the foundations, including the excavations, were built according to plan. In particular, the record drawings reflect that the holes excavated for the turbine foundations were approximately ten feet deep and sixty feet in diameter.

4. I am also familiar with construction practices related to record-keeping concerning the volume of material excavated. Such records are typically kept only if the construction contract in question provides for reimbursement to the contractor based on volumes excavated. The

construction contract with the contractor for Osage Wind did not provide for payment on this basis. However, I note that, even where the contract does provide for reimbursement based on volumes excavated, the contractor calculates the volume based on the size of the hole excavated. Accordingly, here, even without contemporaneous calculation of the volume of materials excavated, precisely the same calculation can be performed today because the record drawings demonstrate the size of the holes excavated.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 12th day of October, 2021

  
\_\_\_\_\_  
Stephen D. Pike

**From:** Randy Gardner <Randy.Gardner@westwoodps.com>

**Sent:** Wednesday, June 03, 2015 9:47 AM CDT

**To:** Tom Sanderfoot <TSanderfoot@sanderfootwind.com>

**Subject:** Osage - Record/Red lines on Foundations

Tommy,

Just left you a voicemail. Looking to see who on your team would have marked up Osage Foundation Drawings during construction with any "As-built" information or other so I can finish the drawings off.

Thanks,  
Randy

**Randy Gardner, PE**

**SENIOR PROJECT MANAGER**

Licensed in AZ, HI, MT, NH, NM, OK, UT, WI, WV

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EXHIBIT A

**To:** Randy Gardner[[randy.gardner@westwoodps.com](mailto:randy.gardner@westwoodps.com)]; Mazurowski, Craig[Craig.Mazurowski@iea.net]; Ringler, Pat[Pat.Ringler@iea.net]; Matt B. Johnson[MJohnson@barr.com]; Steinebach, Estavon[Estavon.Steinebach@iea.net]; Steinbach, Roger[roger.steinbach@iea.net]  
**From:** Charles P. Beauzay  
**Sent:** Thur 6/4/2015 4:42:25 PM  
**Subject:** RE: Osage - Foundation Record Drawings  
[Osage S-02 GE1 79 rev 1 \(RECORD\).pdf](#)  
[Osage S-01 GE1 79 rev 1 \(RECORD\).pdf](#)  
[Osage S-03 GE1 79 rev 1 \(RECORD\).pdf](#)

Randy, attached are the record drawings for Osage.

Chuck

Charles P. Beauzay, PE

Senior Civil Engineer  
Minneapolis office: 952.832.2715  
cell: 612.834.4510  
[cbeauzay@barr.com](mailto:cbeauzay@barr.com)  
[www.barr.com](http://www.barr.com)

resourceful. naturally.



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**From:** Randy Gardner [mailto:[Randy.Gardner@westwoodps.com](mailto:Randy.Gardner@westwoodps.com)]  
**Sent:** Wednesday, June 03, 2015 1:52 PM  
**To:** Mazurowski, Craig (Craig.Mazurowski@iea.net); Ringler, Pat (Pat.Ringler@iea.net); Matt B. Johnson; Charles P. Beauzay; Steinebach, Estavon; Steinbach, Roger (roger.steinbach@iea.net)  
**Subject:** Osage - Foundation Record Drawings

I spoke with Thomas from Sanderfoot. He stated the foundations were built to the BARR drawings and no changes noted. Craig, if you feel differently then let me know.

Matt, please prepare Record Drawings. Should be easy!

Thanks,

**Randy Gardner, PE**  
**SENIOR PROJECT MANAGER**  
Licensed in AZ, HI, MT, NH, NM, OK, UT, WI, WV  
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